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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

NO. 423

ERNEST NIGHTINGALE, Petitioner

v.

UNITED STATES OF AMERICA

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

PETITIONER'S REPLY BRIEF

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Petitioner's Reply Brief

The Government's Brief (Page 1) misstates the question presented. The important substantial error was in requiring petitioner Nightingale to stand trial with other defendants on three separate and distinct conspiracies, separate as to time and place, at one trial. There was no series of transactions as contemplated by Rule 8b of Criminal rules. The respondent was further in error in its statement of the case where it states the petitioner was found guilty under a multiple count indictment charging conspiracy and substantive offenses in the forging and uttering of three sets of United States Savings Bond. The petitioner calls the Court's attention to the fact that there were three separate and distinct conspiracy counts. The indictment did not charge a common scheme, but charged three different independent conspiracies.

The 23rd Count charges a conspiracy beginning February 26, 1963, as to the Hammond bonds. The 24th Count charges a separate conspiracy beginning March 28, 1963, as to the Stofcheck bonds. The 25th Count charges a separate conspiracy on May 10, 1963, relating to the Stellitano bonds. The Court charged the jury that three separate conspiracies were involved, (Nightingale App. 52a.)

The Government's argument that there was a common scheme is not borne out by the record. As stated above, there were three separate conspiracies with substantive counts relating to each separate conspiracy. The indictment did not allege a common scheme but separate transactions and the case was tried on the basis of separate transactions.

Petitioner relies on *McElroy v. U. S.*, 164 U.S. 76. That case is indistinguishable from the petitioner's case. The Government seeks to distinguish the McElroy case "upon the basis that there no count linked all the defendants."

In McElroy	*Petitioner's case*
No. 5332—McElroy, Bland, Henry Hook, Charles Hook, Stufflebeam, Jennings	23rd Count — Stringi, Nightingale, Simon & Horovitz
Assault with intent to kill Elizabeth Miller, April 16, 1894	Conspiracy to forge and utter Hammond bonds February 26, 1963, at Berlin, Pa.

In McElroy	*Petitioner's case*
No. 5333—McElroy, Bland, Henry Hook, Charles Hook, Stufflebeam, Jennings Assault with intent to kill Sherman Miller, April 16, 1894	1st Count—Stringi, Nightingale, and Horovitz Forging one Hammond Bond Feb. 26, 1963
	2nd Count—Stringi, Nightingale and Horovitz Uttering one Hammond Bond February 26, 1963, at Berlin, Pa.
No. 5334—McElroy, Bland, Henry Hook, Charles Hook, Stufflebeam, Jennings Arson Eugene Miller House May 1, 1894	3rd Count—Stringi, Nightingale, and Horovitz Forging one Hammond bond February 26, 1963, at Berlin, Pa.
No. 4843—McElroy, Bland, Henry Hook Arson of Bruce Miller House April 16, 1894	4th Count—Stringi, Nightingale and Horovitz Uttering one Hammond Bond at Berlin, Pa.
	5th Count—Stringi, Nightingale and Horovitz Forging one Hammond bond February 26, 1963, at Berlin, Pa.
	6th Count—Stringi, Nightingale and Horovitz Uttering one Hammond Bond February 26, 1962, at Berlin, Pa.

In McElroy	*Petitioner's case*
	24th Count — Cochran, Stringi, Nightingale and Simon Conspiracy to forge and utter Stofcheck Bonds, March 28, 1963 at Berlin, Pa.
	7th Count—Stringi, Nightingale and Cochran Forging one Stofcheck Bond March 28, 1963, at Berlin, Pa.
	8th Count—Stringi, Nightingale and Cochran Uttering one Stocheck Bond, March 28, 1963, at Berlin, Pa.
	9th Count—Stringi, Nightingale, and Cochran Forging one Stofcheck Bond, March 28, 1963, at Berlin, Pa.
	10th Count — Stringi, Nightingale and Cochran Uttering one Stofcheck Bond, March 28, 1963, at Berlin, Pa.

In Mc Elroy	*Petitioner's case*
	11th Count — Stringi, Nightingale and Cochran Forging one Stofcheck Bond, March 28, 1963, at Berlin, Pa.
	12th Count — Stringi, Nightingale and Cochran Uttering one Stofcheck Bond, March 28, 1963, at Berlin, Pa.
	25th Count — Conspiracy Nightingale and Stringi, May 10, 1963, to forge and utter Stellitano Bonds, Somerset, Pa.
	15th, 16th, 17th and 18th Counts — Nightingale and Stringi Forging and uttering Stellitano Bonds, May 10, 1963, Somerset, Pa.

From the above, it is apparent therefore that in McElroy, the first, second and third counts linked all of the defendants.

Petitioner submits that all of the Court of Appeals cases cited by him are all in conflict with the decison of the Court of Appeals for the Third Circuit All of petitioner's cited cases involve multiple defendants and separate transactions and are unconnected. The Government has lost sight of the fact that in petitioner's case,

there are three separate and distinct conspiracies charged and the jury's verdict indicates that each of the conspiracies were independent and unrelated.

The Government's Brief demonstrates the importance of the question involved and the confusion that exists in a single trial of multiple defendants on separate charges. Therefore for the reasons stated above as well as those stated in the Petition for Writ of Certiorari, petitioner prays that his Petition for Certiorari be granted.

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